

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish  
Consumer Rights and Consumer  
Protection Rules Applicable to All  
Telecommunications Utilities.

Rulemaking 00-02-004

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER  
ADVOCATES ON COMMISSIONERS PEEVEY AND KENNEDY'S  
PROPOSED DECISION ON TELECOMMUNICATIONS CONSUMER  
BILL OF RIGHTS**

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## **I. INTRODUCTION**

In accordance with Rule 77 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the schedule set forth in the Notice of Availability issued on December 22, 2005, the Division of Ratepayer Advocates (DRA) submits its reply comments on Commissioners Peevey and Kennedy's Proposed Decision (PD) on the Telecommunications Consumer Bill of Rights. DRA concurs and wholly supports the opening comments of other consumer groups and law enforcement agencies, including The Utility Reform Network (TURN) and the Attorney General's (AG) Office. However, DRA opposes both the Wireline Group and the Joint Wireless Carriers' proposed modifications to the PD set forth in their opening comments as discussed below.

## **II. DISCUSSION**

### **A. Rules 1, 2 and 3 in Part 2 of the Revised General Order Should Not Be Deleted.**

The PD has virtually eliminated all of the substantive enforceable consumer protection rules that the Commission adopted in Decision 04-05-057 and General Order (GO) 168. Part 2 of the revised general order now only contains three rules out of 15 rules<sup>1</sup> adopted in GO 168. These remaining three rules include a rule which requires carriers to comply with information requests from the Consumer Affairs Branch (CAB) in a timely manner, a rule which requires carriers to issue identification cards to their employees, and a rule which extends 911 to wireless carriers. The Joint Wireless Carriers now proposes that even these three rules be eliminated so that there is not even a single rule in the revised general order for consumers.<sup>2</sup> They assert that these rules should be deleted because they duplicate existing laws. Even if these rules mirror existing laws, DRA agrees with the PD that these rules are justified and should be included in the

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<sup>1</sup> The 15 rules refer to the consumer protection rules in Part 2 of GO 168 and do not include rules governing non-communications related charges and rules governing slamming complaints, which are Parts 3 and 4 of GO 168, respectively.

<sup>2</sup> Opening Comments of Wireless Carriers, pp. 7-9.

revised general order because the benefits of having these rules, such as public safety, outweigh any potential cost that may be imposed on carriers.<sup>3</sup> The PD also concludes that even a competitive marketplace does not warrant an exemption from these three rules.<sup>4</sup> DRA agrees with the PD's rationale and hence, recommends that the Commission continue to keep these rules in the revised general order.

**B. Interpretation and Application of the Rules Do Not Rest Solely With the Commission.**

In addition to supporting the PD's prevention of private right of action, the Wireline Group, in its opening comments, requests that the rights and rules included in the revised general order be interpreted and applied only by the Commission.<sup>5</sup> This request is without merit and should be denied. While the interpretation of the rules rightly so does rest with the Commission since it established them, there is no good reason why the rules should only be construed and applied by the Commission. In fact, the Wireline Group's request directly contravenes and undermines the PD because the PD's new enforcement program encourages the Commission staff to collaborate and work closely with local law enforcement officials. The PD states that the Commission is "not the only public body tasked with that [enforcement] responsibility. The Attorney General and local District Attorneys are the principal enforcers of California's general anti-consumer-fraud laws . . . as well as the state's criminal laws. Many acts that violate the P.U. Code or our regulations also violate one or more or both of the cited Civil Code sections or some portion of the Criminal Code."<sup>6</sup> The PD further goes on to state that "The importance of this collaboration with local law enforcement officials is particularly evident with respect to telecommunications carriers outside of our jurisdiction, such as those involving phone cards or resale of telecommunications equipment and sales."<sup>7</sup>

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<sup>3</sup> PD, pp. 55-56.

<sup>4</sup> PD, p. 55.

<sup>5</sup> Opening Comments of the Wireline Group, pp. 2, 6-7.

<sup>6</sup> PD, pp. 78-79.

<sup>7</sup> PD, p. 80.

Accordingly, as the PD concludes, interpretation and enforcement of the rules lie not only with the Commission, but also with the courts and other law enforcement agencies, including the AG's Office and the District Attorneys.

**C. Consumer Education and Enforcement Initiatives Must Be Combined With Enforceable Consumer Protection Rules.**

While consumer education and enforcement initiatives are important, DRA agrees with the California Small Business Roundtable and California Small Business Association (CSBRT) that these proposals are no substitute for effective consumer protection rules.<sup>8</sup> As we stated in our opening comments, CSBRT also makes the same point about the cost of implementing a large-scale public education program. It notes that the Customer Education Program (CEP) established in 1997 by the Commission to inform customers about electric deregulation and customer choice cost \$87.5 million, but was largely a waste of money because it accomplished very little in terms of educating consumers.<sup>9</sup> It goes on to state that:

“Most importantly, the CEP did nothing to protect the consumers from the fraud, cheating and market manipulation that ultimately cost consumers many billions of dollars. Despite the tens of millions of dollars spent on consumer education by the CEP, California consumers were repeatedly victimized in the absence of effective rules and regulation.”<sup>10</sup>

Without strong consumer protection rules, the consumer bill of rights education and outreach program envisioned in the PD would likewise be meaningless and a waste of ratepayer dollars.<sup>11</sup> DRA agrees with TURN of the folly of requiring customers to educate themselves about the various laws that may or may not apply to their problem with a carrier:

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<sup>8</sup>Opening Comments of CSBRT, p. 8.

<sup>9</sup> Opening Comments of CSBRT, p. 9.

<sup>10</sup> *Id.*

<sup>11</sup> Pacific Bell, in its comments, states that the Governor's proposed budget allocates \$9.9 million and 28 additional persons for the Commission to support the Telecommunications Bill of Rights.

“Relying on existing federal and state laws creates a “Swiss cheese” approach to consumer protection, making it impossible to design an effective consumer education program. For example, consumers will need to understand unfair business practices laws, antitrust concepts, and contract law, among others. Consumers will have to understand preemption and jurisdiction issues to decide when to contact the FCC and when to contact the CPUC. Consumers will need to know which laws apply to wireline incumbents, wireline competitors, or wireless and which apply to all three. They will also have to understand which of the rules are actually rights and only provide unenforceable guidelines on how the carriers *should* behave. With all the variability and exceptions to the existing body of laws, there is no way Commission staff could create an effective program designed to advise consumers of their rights under the framework provided by the Proposed Decision.”<sup>12</sup>

Moreover, consumer education and outreach must be combined with strong consumer protection rules.

**D. Effective Enforcement Is Not Possible Without Enforceable Consumer Protection Rules.**

In its opening comments, DRA emphasized that the PD’s new enforcement program cannot be effective, particularly against wireless carriers, without adequate consumer protection rules. The AG’s Office similarly points out this disconnect in its opening comments on the PD as follows:

The Kennedy Draft includes “rights” that it admits are intended to be completely unenforceable, offers no corresponding enforceable consumer protection rules, and in numerous cases proposes “rights” significantly less protective of consumers than the legally enforceable rights consumer have under current statutes.<sup>13</sup>

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<sup>12</sup> Opening Comments of TURN, p. 22.

<sup>13</sup> Id.

The AG's Office also points out that, by abrogating its authority and responsibility to protect consumers by eliminating most of the rules adopted in GO 168, the PD will end up costing the state much more. DRA agrees with the AG's Office that:

Although, as a matter of law, a proposed rule or regulation such as these, if passed, cannot legally trump consumers' statutory rights, passage of these unenforceable, and in some cases anti-consumer, "rights" would also inevitably result in costly litigation over whether the Commission's rules can limit consumers' rights more than under current statutory protections.<sup>14</sup>

Accordingly, effective enforcement is not possible if there are no rules that the Commission and law enforcement agencies can rely upon and enforce against carriers that engage in fraud and abuse against consumers.

### **III. CONCLUSION**

For all of the foregoing reasons and the reasons set forth in our opening comments, DRA urges the Commission to adopt a comprehensive consumer bill of rights that includes GO 168 consumer protection rules, consumer education and enforcement measures.

Respectfully submitted,

/s/ SINDY J. YUN

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<sup>14</sup> Opening Comments of the AG's Office, p. 4.

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON COMMISSIONERS PEEVEY AND KENNEDY’S PROPOSED DECISION ON TELECOMMUNICATIONS CONSUMER BILL OF RIGHTS**” in **R.00-02-004**, by using the following service:

[ X ] **E-MAIL SERVICE:** sending the entire document as an attachment to an e-mail message to all know parties of record to this proceeding who provided e-mail addresses.

[ X ] **U.S. MAIL SERVICE:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed in San Francisco, California, on the **23<sup>rd</sup>** day of **January, 2006**.

/s/ ANGELITA F. MARINDA  
Angelita F. Marinda

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.